

9764-B
RECORDATION NO. 9764 Filed 1425

OCT 13 1978 2 10 PM
INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 8762 Filed 1425

OCT 13 1978 2 10 PM
INTERSTATE COMMERCE COMMISSION
BraeLease Corporation
Three Embarcadero Center
San Francisco, California

RECORDATION NO. 9763 Filed 1425

OCT 13 1978 2 10 PM
INTERSTATE COMMERCE COMMISSION

9764-A
RECORDATION NO. 9764 Filed 1425

OCT 13 1978 2 10 PM
INTERSTATE COMMERCE COMMISSION
Secretary

Interstate Commerce Commission
Washington, D. C. 20423

9764-A
RECORDATION NO. 9764 Filed 1425

OCT 13 1978 2 10 PM
INTERSTATE COMMERCE COMMISSION

October 12, 1978

9763-A
RECORDATION NO. 9763 Filed 1425

OCT 13 1978 2 10 PM
INTERSTATE COMMERCE COMMISSION

Dear Sir:

9765

RECORDATION NO. 9765 Filed 1425

OCT 13 1978 2 10 PM
INTERSTATE COMMERCE COMMISSION

Enclosed for filing and recording pursuant to Section 20c of the Interstate Commerce Act are the following documents relating to the railroad equipment described and marked in accordance with Schedule I attached hereto:

9765-B
RECORDATION NO. 9765 Filed 1425

OCT 13 1978 2 10 PM
INTERSTATE COMMERCE COMMISSION

(1) Equipment Lease Agreement dated October 1, 1978 between Birmingham Trust National Bank, as Owner Trustee and BraeLease Corporation (hereinafter called BraeLease Lease).

(2) Lease Agreement dated as of February 28, 1978 between BRAE Corporation and Willis B. Kyle Inc. (hereinafter called Kyle Lease) (including Riders No. 1, 2 and 3 and Equipment Schedule No. 1), Amendment No. 1 thereto dated as of March 31, 1978 and Amendment No. 2 thereto dated as of April 15, 1978.*

(3) Sublease Agreement dated as of March 28, 1978 between Willis B. Kyle Inc. and Yreka Western Railroad Company (hereinafter called Yreka Sublease) (including Riders No. 1, 2 and 3 and Equipment Schedule No. 1) and an Assignment of the Sublease Agreement dated as of October 11, 1978 to BraeLease Corporation.*

(4) Purchase Agreement dated as of September 30, 1978 between FMC Corporation and BraeLease Corporation (hereinafter called Purchase Agreement), an Assignment of the Purchase Agreement dated as of October 1, 1978 to Birmingham Trust National Bank, as Owner Trustee, and a Consent to the Assignment dated as of October 1, 1978 by FMC Corporation.

*and an assignment of said agreement dated as of October 11, 1978, to Birmingham Trust National Bank, as Owner Trustee.

No.
Date OCT 13 1978
Fee \$ 240.00

ICC Washington, D. C.

9765-A
RECORDATION NO. 9765 Filed 1425

OCT 13 1978 2 10 PM

INTERSTATE COMMERCE COMMISSION

RECEIVED

OCT 13 2 05 PM '78

I.C.C.
FEE OPERATION BR.

The names and addresses of the parties to the above transactions are as follows:

(1) BraeLease Lease

- (a) Lessor: Birmingham Trust National
Bank, as Owner Trustee
P. O. Box 2554
Birmingham, Alabama 35290
- (b) Lessee: BraeLease Corporation
Three Embarcadero Center
San Francisco, California
94111

(2) Kyle Lease

- (a) Lessor: BraeLease Corporation
Three Embarcadero Center
San Francisco, California
94111
- (b) Lessee: Willis B. Kyle Inc.
1350 "O" Street, Suite 301
Fresno, California 93721

(3) Yreka Sublease

- (a) Lessor-
Assignor: Willis B. Kyle Inc.
1350 "O" Street, Suite 301
Fresno, California 93721
- (b) Lessee: Yreka Western Railroad Company
300 East Minor Street
Yreka, California 96097
- (c) Assignee: BraeLease Corporation
Three Embarcadero Center
San Francisco, California 94111

(4) Purchase Agreement

- (a) Manufacturer: FMC Corporation
Box 3616
4700 Northwest Front Avenue
Portland, Oregon 97208

(b) Vendee-
Assignor: BraeLease Corporation
Three Embarcadero Center
San Francisco, California 94111

(c) Assignee: Birmingham Trust National Bank,
as Owner Trustee.
P. O. Box 2554
Birmingham, Alabama 35290

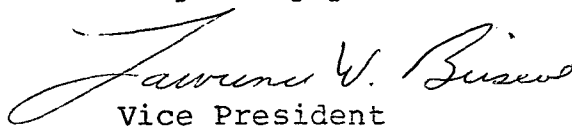
BRAE Corporation, the corporation which originally executed the Kyle Lease was merged into its wholly-owned subsidiary, BraeLease Corporation, on September 27, 1978. Pursuant to such merger, BraeLease Corporation assumed all of the rights and obligations of BRAE Corporation. Accordingly, BraeLease Corporation is now party to the Kyle Lease.

Also enclosed is our check payable to the order of the Interstate Commerce Commission in the amount of \$200, the prescribed fee for filing and recording the enclosed documents.

Please file and record the enclosed documents and cross-index them under the names of, in the case of the BraeLease Lease, the Lessor and the Lessee, in the case of the Kyle Lease, the Lessee and the Lessor (both BraeLease Corporation and its predecessor, BRAE Corporation), in the case of the Yreka Sublease, the Lessor-Assignor, the Lessee and the Assignee,*and in the case of the Purchase Agreement, the Manufacturer, the Vendee-Assignor and the Assignee.

Return to the person presenting this letter, together with your letter confirming such filing and recordation and your fee receipt therefor, all counterparts of the enclosed documents not required for filing.

Very truly yours,


Vice President

The Kyle Lease and the Yreka Sublease should also be cross-indexed under the name of Birmingham Trust National Bank, as Owner-Trustee, as Assignee.

SCHEDULE I

<u>Quantity</u>	<u>Type</u>	<u>Identifying Numbers (Both Inclusive)</u>	<u>Markings</u>
100	70-ton 50 '6" Box Cars, AAR Class XM	YW25101-YW25200	"Property of and leased from Birmingham Trust National Bank, as trustee, subject to an agreement filed under the Interstate Commerce Act, Section 20c"

Interstate Commerce Commission
Washington, D.C. 20423

10/13/78

OFFICE OF THE SECRETARY

Lawrence W. Brisco
BraeLease Corporation
Three Embarcadero Center
San Francisco, Calif.

Dear

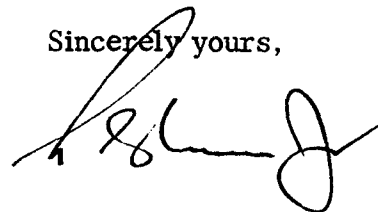
Sir:

The enclosed document(s) was recorded pursuant to the
provisions of Section 20(c) of the Interstate Commerce Act,
49 U.S.C. 20(c), on 10/13/78 at 2:10pm
and assigned recordation number(s)

9762, 9763, 9763-A, 9764, 9764-A, 9764-B

9765
9765-A
9765-B

Sincerely yours,



H.G. Homme, Jr.,
Acting Secretary

Enclosure(s)

SE-30-T
(2/78)

RECORDATION NO. 9762 Filed 1428

OCT 1 1978 10 10 PM

INTERSTATE COMMERCE COMMISSION

EQUIPMENT LEASE AGREEMENT

Dated as of October 1, 1978

Between

BIRMINGHAM TRUST NATIONAL BANK,

As Owner Trustee

As Lessor

and

BRAELEASE CORPORATION,

As Lessee

Box Car Lease

Financing

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EQUIPMENT LEASE AGREEMENT

EQUIPMENT LEASE AGREEMENT ("this Lease") dated as of October 1, 1978, between Birmingham Trust National Bank, not individually but solely as Owner Trustee under that certain Trust Agreement with Birmingham Trust National Bank and Schuler Industries, Inc. ("the Beneficiaries") dated as of May 31, 1978 ("the Lessor"), and BRAELEASE Corporation, a Delaware corporation ("the Lessee");

W I T N E S S E T H:

WHEREAS, concurrently herewith the Lessee has assigned to the Lessor its interests under the purchase order with the manufacturer pursuant to which the Lessee was to purchase the railroad equipment described in Schedule A hereto (collectively the "Cars" and individually a "Car"); and

WHEREAS, the Lessee desires to lease the Cars (or such lesser number as are delivered and accepted prior to December 31, 1978, and as to which the aggregate purchase price as herein defined does not exceed \$3,655,000) from the Lessor, at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and the covenants hereinafter set forth and intending to be legally bound, the Lessor and the Lessee hereby agree as follows:

1. Acceptance and Lease of Cars. The Lessor hereby agrees to lease the Cars (or such lesser number as are delivered and accepted prior to December 31, 1978, and as to which the aggregate purchase price as herein defined does not exceed \$3,655,000) to the Lessee and the Lessee hereby agrees to lease the Cars from the Lessor, all upon the terms and conditions hereinafter contained. The Lessor will cause the Cars to be tendered to the Lessee at the times and at the point or points as provided in the purchase order for the Cars or at such other point as the Lessor and Lessee may agree. The Lessor hereby appoints the Lessee as its agent for the purpose of inspecting and accepting the Cars for the Lessor. Immediately upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Cars are found to be in good order, to accept delivery of

the Cars on behalf of the Lessor and to execute and deliver to the Lessor a Certificate of Acceptance in substantially the form attached hereto as Schedule B, whereupon such Cars will be conclusively deemed to have been delivered to and accepted by the Lessee notwithstanding any defect with respect to design, manufacture, condition or otherwise, and shall be subject thereafter to all the terms and conditions of this Lease. In no event shall the Lessee place in service or otherwise use any Car prior to the Lessee's acceptance of the Cars hereunder.

2. Term. The basic Lease term as to each Car shall commence on the date of the delivery and acceptance thereof and shall continue for the period to and including ~~December 31, 1993~~. If such term is extended, the word "term" or "period" as used in this Lease shall be deemed to refer to the extended term, and all provisions of this Lease shall apply during and until the expiration of such extended period, except as may be otherwise specifically provided in this Lease or in any subsequent written agreement of the parties.

3. Rent, Net Lease. The quarterly rent for the Cars shall be in an amount equal to 3.189424% of the invoice purchase price of the Cars plus any sales taxes, freight charges or inspection fees paid by the Lessor (the "Purchase Price") and shall be payable in 60 consecutive quarterly installments in arrears, the first such payment to be made on the last day of ~~March, 1979~~ (the "First Basic Rent Date"), for the period from and including ~~January 1, 1978~~ (the "Basic Term Commencement Date"), to and including the First Basic Rent Date, all as more fully set forth in Schedule A hereto. In addition to the above-described quarterly rent, the Lessee shall pay the Lessor interim rent for each Car for the period prior to the Basic Term Commencement Date, calculated at the rate of .035438% of the Purchase Price of each such Car per day, commencing on the date upon which the Lessor pays the manufacturer for such Car (hereafter the "Closing Date") and terminating with and payable on the Basic Term Commencement Date. Anything to the contrary herein notwithstanding, any nonpayment of rentals or other obligations hereunder shall result in the obligation on the part of the Lessee to pay an additional amount equal to 10 percent per annum on the overdue amount for the period of time during which the same is overdue.

This Lease is a net lease and the rent and other amounts due hereunder shall not be subject to any defense, claim, reduction, abatement, set-off, or adjustment for any reason whatsoever except to the extent expressly provided in Section 9 or in Section 12; nor, except as provided in Section 9 or Section 12, shall this Lease terminate, or the

respective obligations of Lessor or Lessee be otherwise affected, by reason of any defect in or failure of the title of the Lessor to the Cars or any defect in or damage to or loss or destruction of all or any of the Cars from whatsoever cause, the taking or requisition of the Cars by condemnation or otherwise, the lawful prohibition of Lessee's use or the use by any sublessee of the Cars, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or lack of right, power or authority of the Lessor to enter into this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

All payments provided for in this Lease to be made to the Lessor shall be made to the Lessor at 112 Twentieth Street North, Birmingham, Alabama 35203, in immediately available funds, or at such other place as the Lessor shall specify in writing.

4. Lessee's Representations and Warranties. Lessee represents and warrants that:

(a) Lessee is a corporation duly organized and existing in good standing under the laws of the State of Delaware and is duly qualified to do business where Lessee's failure to qualify would adversely affect its ability to perform under this Lease or materially and adversely affect Lessee's financial condition;

(b) This Lease has been duly authorized by all necessary corporate action on the part of Lessee, does not require any shareholder approval and does not contravene Lessee's Certificate of Incorporation or By-Laws or any indenture, credit agreement or other contractual agreement to which Lessee is a party or by which it is bound;

(c) Neither the execution and delivery by Lessee of this Lease nor any of the transactions by Lessee contemplated hereby require any notice to or consent

or approval by or filing with any government agency or authority, except for the filing, registering or recording of this Lease in conformity with Section 20c of the Interstate Commerce Act and filing of a financing statement naming the Lessee as debtor in conformity with the Uniform Commercial Code of California;

(d) The office where the Lessee keeps its records concerning this Lease and the Subleases (as hereinafter defined) and the Lessee's chief place of business are in California;

(e) This Lease constitutes a true lease for Federal and state income tax purposes under which Lessor will be treated as the owner and the Lessee as the lessee of the Cars.

(f) This Lease constitutes a legal, valid and binding obligation of Lessee enforceable in accordance with its terms, except as the enforcement hereof may be limited by laws relating to bankruptcy, insolvency or creditors' rights generally or by laws or judicial decisions limiting the right of specific performance;

(g) The Subleases (as hereinafter defined) constitute legal, valid and binding obligations of the parties thereto enforceable in accordance with their terms, except as the enforcement thereof may be limited by laws relating to bankruptcy, insolvency or creditors' rights generally or by laws or judicial decisions limiting the right of specific performance;

(h) There are no pending or threatened actions or proceedings before any court or administrative agency which may materially adversely affect Lessee's financial condition or operations, except the ex parte proceedings before the Interstate Commerce Commission described in Schedule C hereto; and

(i) The audited balance sheet of Brae Corporation, a California corporation ("Brae"), which was the predecessor of the Lessee as of March 31, 1978, and the unaudited balance sheet of Brae as of August 31, 1978, (copies of which have been furnished to Lessor) correctly set forth Brae's financial condition as of such dates. Brae was merged into the Lessee on September 27, 1978, and since August 31, 1978, there has been no material adverse change in the condition of the Lessee.

5. Conditions Precedent to Lessor's Obligation to Close. The obligations of the Lessor to purchase and pay the Purchase Price for the Cars under Section 1 hereof shall be subject to the satisfaction of the following conditions at or prior to the first deliveries of the Cars except for (a) and (j)(i), (cc) and (ccv):

NOTE
CBV

(a) - The Cars shall be received by the Lessor from the manufacturer in conformance with the terms of the purchase order in connection therewith.

(b) Prior to or concurrently with the execution and delivery of this Lease, the Lessee shall have entered into a sublease of the Cars with Willis B. Kyle, Inc., and the said Willis B. Kyle, Inc. shall have entered into a sublease of the Cars with Yreka Western Railroad Company ("the Subleases"), and the rents under the Subleases assigned to Lessor, in both cases by instruments satisfactory in form and substance to the Lessor.

(c) The Subleases shall be marked to show the assignment to the Lessor and the original thereof held by the Lessee shall be delivered to the Lessor.

(d) The Lessee shall furnish the Lessor an opinion of a qualified expert reasonably satisfactory to Lessor, who has professional knowledge of the type of property subject to this Lease, prepared in accordance with the requirements of Section 4(1)(C) of Revenue Procedure 75-21, that (i) the fair market value of the Cars at the end of the original term hereof, will be an amount at least equal to twenty percent (20%) of the Purchase Price for the Cars without including in such fair market value any increase or decrease for inflation or deflation during such term and after subtracting

from such fair market value the cost, if any, to Lessor for the removal and delivery of the Cars at the end of such term, and (ii) the useful life of the Cars is at least twenty (20) years from the commencement of the term hereof. Such opinion shall show the manner in which such fair market value and remaining useful life were determined. Neither the furnishing of such opinion nor anything contained therein or in this Lease shall be construed to be a guarantee by the Lessee of the fair market value of the Cars at the end of the original term hereof.

(e) The Lessor shall have received a favorable written opinion of counsel for the Lessee, in form and substance satisfactory to the Lessor to the effect that (i) the Lessee is a corporation legally incorporated and validly existing in good standing under the laws of its jurisdiction of incorporation with full corporate power to enter into this Lease, (ii) the Lessee is duly qualified and in good standing in each jurisdiction in which the failure to qualify would adversely affect its ability to perform under this Lease or materially and adversely affect its financial condition, (iii) this Lease has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal and binding agreement of the Lessee enforceable in accordance with its terms, except as the enforcement thereof may be limited by laws relating to bankruptcy, insolvency or creditors' rights generally; (iv) this Lease and the Subleases have been duly filed and recorded in conformity with Section 20c of the Interstate Commerce Act and an appropriate financing statement sufficient to protect the Lessor's interest in the rents under the Subleases has been filed in conformity with the Uniform Commercial Code of California; and no other filing, recording, registering or depositing with any government agency or authority is necessary to protect the Lessor's title to the Cars in the United States of America or interest in the rents under the Subleases; (v) no approval, consent or withholding of consent is required from any public regulatory body with respect to the entering into or performance of this Lease or the Subleases; (vi) the entering into and performance of this Lease or the Subleases will not result in any violation of any law, order of court or other governmental agency, or any breach of, or constitute a default under, or result in the creation of any lien, charge or encumbrance of any nature whatsoever under any

indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which the Lessee may be bound, and (vii) neither the Lessor nor the Beneficiaries are required to qualify as foreign corporations solely by reason of the ownership and leasing of the Cars as contemplated by this Lease. In giving its opinions as to enforceability, such counsel may state that such opinion does not imply the remedies provided by the Lease may be specifically enforced.

(f) Concurrently with the execution and delivery of the Lease, the Lessee will cause to be delivered to the Lessor copies of the resolutions of the Board of Directors of the Lessee certified by its Secretary or Assistant Secretary, duly authorizing the execution, delivery and performance of this Lease, together with incumbency certificates as to the persons authorized to execute and deliver this Lease and any related documents.

(g) The Lessee shall provide an Insurance Certificate in form and substance satisfactory to the Lessor certifying the existence of the policies and coverage required under Section 10 hereof.

(h) This Lease and the Subleases shall have been duly filed, recorded and deposited in conformity with Section 20c of the Interstate Commerce Act.

(i) Appropriate financing statements shall have been filed in California.

(j) The Lessor further shall have received copies of the following documents:

(i) an invoice of the manufacturer setting forth the Purchase Price of the Cars duly certified by the Lessee;

(ii) a bill of sale from the manufacturer which may be conditioned upon payment for the Cars;

(iii) an opinion of counsel for the manufacturer that such bill of sale is valid and vests in Lessor title to the Cars.

(iv) a purchase order for the Cars together with an assignment thereof to the Lessor.

6. Conditions Precedent to Lessee's Obligation to Close. The obligations of the Lessee hereunder shall be subject to the receipt at or prior to the first deliveries of the Cars of (a) a favorable written opinion of counsel for the Lessor, in form and substance satisfactory to the Lessee to the effect that (i) the Lessor is the trustee of a trust legally formed and validly existing under the laws of the State of Alabama with full power and authority to enter into this Lease; (ii) this Lease has been duly executed and delivered by the Lessor as such trustee and constitutes a valid, legal and binding agreement of the Lessor as such trustee enforceable in accordance with its terms; and (iii) no approval is required from any public regulatory bodies in Alabama with respect to the entering into or performance of this Lease by the Lessor, and (b) a written representation by the Lessor and the Beneficiaries that they are acquiring their respective interests in the Cars and entering this Lease as an investment for their own account and not with a view to the distribution or resale thereof, subject to any requirement of law that the disposition of their respective property be at all times within their respective control.

7. Identification Marks. The Lessee will cause the Cars to be kept numbered with the identifying numbers set forth in Schedule A and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each such Car, in letters not less than one inch in height, the words "Property of and leased from Birmingham Trust National Bank, as trustee, subject to an ~~equipment lease~~ agreement filed under the Interstate Commerce Act, Section 20c" or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Cars and its rights under this Lease. The Lessee will not permit any Car to be placed in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace promptly any such name and words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Car except with the consent of the Lessor and in accordance with a statement of new identifying numbers to be substituted therefor, which consent and statement previously shall have been filed with the Lessor and the Interstate Commerce Commission by the Lessee; provided, however, that, in addition to such identifying number, the Lessee may cause to be placed on each Car in such position as not to be confused with the identifying number thereon a reporting number identifying such Car for reporting and operating purposes, which reporting number may be changed by the Lessee from time to time without the consent of the Lessor or the filing, recording, registering and depositing of any instrument.

CSL
MTG

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Cars as a designation that might be interpreted as a claim of ownership. Subject to the foregoing, the Lessee may cause the Cars to be lettered with the names or initials or other insignia used by the Lessee or any sublessee or their respective affiliates on railroad equipment used by it of the same or similar type for convenience of identification of the right of the Lessee or any sublessee to use the Cars under this Lease.

8. Taxes. The Lessee agrees that, during the continuance of this Lease, in addition to the rentals herein provided, it will promptly report, pay and discharge when due all registration and license fees, all taxes, assessments and other governmental charges (together with any penalties, fines or interest thereon), including but not limited to sales, use, lease or property taxes, or gross receipt taxes, levied or assessed upon the Cars or the interest of the Lessor or the Lessee in the Cars or any portion of such Cars or upon the use, operation or leasing thereof or the rentals or earnings or receipts arising therefrom and will promptly pay or reimburse the Lessor and the Beneficiaries for all taxes, assessments and other governmental charges levied or assessed against the Lessor or the Beneficiaries on account of the Lessor's acquisition or ownership of such Cars or any portion thereof or on account of the use, operation or leasing thereof or on account of the rentals or earnings or receipts arising therefrom [excluding, however (a) any United States Federal income tax payable by the Lessor or the Beneficiaries in consequence of the receipt of payments provided for herein and (b) the aggregate of all state or local taxes measured by net income based on such receipts (or such taxes measured by gross receipts which are in effect or in substitution for an income tax) up to the amount of any such taxes based on such receipts which would be payable to the state and locality in which the Lessor or the Beneficiaries have their principal place of business without apportionment to any other state, but including any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided and any and all other Federal, state or other taxes imposed on the Lessor] including but not limited to any sales or use or lease taxes payable on account of the acquisition or ownership of the Cars or any portion thereof by the Lessor or on account of the leasing of the Cars hereunder; but the Lessee shall not be required to pay the same so long as it shall in good faith and by appropriate legal or administrative proceedings contest the validity or amount thereof unless thereby, in the reasonable opinion of the Lessor, the rights or interests of the Lessor will be materially endangered. If the Lessee has paid or reimbursed the Lessor or the Beneficiaries for any such tax, the Lessor shall at the written request and expense of the Lessee, file or permit to be filed in its name, a claim for refund of

such tax in form and manner approved by the Lessee, provided that the Lessee shall have first provided the Lessor (i) an opinion of independent tax counsel that a reasonable and bona fide basis exists for such claim and (ii) indemnity satisfactory to the Lessor for any liability, cost or expense, including attorneys' fees, which the Lessor may incur in connection with such claim. In the event any tax reports are required to be made on the basis of individual Cars, the Lessee will either make such reports in such manner as to show the ownership of such Cars by the Lessor or will notify the Lessor of such requirement and will make such report in such manner as shall be satisfactory to the Lessor; provided, however, that if the Lessee is not permitted to make such reports on behalf of the Lessor, it will so notify the Lessor and will furnish to the Lessor information necessary for the Lessor to make such reports with respect to the Cars.

The Lessee shall also pay all recording taxes and fees for the recording of this Lease or any document in connection therewith.

All of the agreements contained in this Section 8 shall survive and continue in full force and effect notwithstanding termination of this Lease or of the lease of any or all Cars hereunder.

9. Payment for Casualty Occurrence or Cars Unserviceable for Use. In the event that any Car shall be or become worn-out, lost, stolen, destroyed or irreparably damaged from any cause whatsoever or the Lessor declares a casualty occurrence pursuant to the third paragraph of Section 12 hereof (any such occurrences being hereinafter called "Casualty Occurrences") during the term of this Lease, the Lessee shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Lessor in regard thereto. On the next succeeding rental payment date, the Lessee shall pay to the Lessor a sum equal to the Casualty Value (as defined and determined in accordance with Schedule D hereto) of such Cars as of the date of such payment. Upon making such payment to Lessor plus accrued rent in respect of any such Car, (i) rent on such Car shall cease to accrue, (ii) title to such Car shall automatically pass to the Lessee AS-IS AND WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, ON THE PART OF LESSOR, and (iii) the term of lease of such Car shall end.

The Lessee shall bear the risk of any Casualty Occurrence and, except as hereinabove in this Section 9 provided, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Car.

10. Insurance. Lessee shall at all times during the term of this Lease carry and maintain or cause to be carried or maintained on the Cars insurance in the same kind, amounts and form and with the same company or companies as other railroad cars owned or leased by the Lessee are customarily insured or such other insurance as shall be mutually satisfactory to the parties hereto, but in any event public liability coverage in amounts not less than \$5,000,000, and property damage insurance in an amount at least equal to the Casualty Value of the Cars (with deductible limits not to exceed the lesser of 5% of any loss or \$10,000), provided that such property damage insurance for all freight cars owned or leased by the Lessee may be limited to \$5,000,000 for each occurrence. Evidence of such coverage shall be delivered to Lessor concurrently with the acceptance by Lessee of the Cars under this Lease. Thereafter, Lessee will deliver to Lessor all certificates of insurance issued in accordance with the terms and conditions as set forth above. Lessee will cause its insurers to advise Lessor in writing promptly in the event such insurance is as a result of any default in payment or premium or any other act or omission invalidated or rendered unenforceable in whole or part. All insurance policies and coverage required under the terms of this Lease shall provide for not less than thirty days' notice to Lessor at the address stated herein, in the event of reduction, termination or cancellation of insurance by Lessee or its insurers. In the event that Lessee shall fail to maintain insurance as herein provided, Lessor may, at its option, provide such insurance and, in such event, Lessee shall upon demand, reimburse Lessor for the cost thereof. All such insurance shall name Lessor as one of the insured.

11. Reports. Lessee shall furnish to Lessor (i) as soon as available but in any event within 120 days after each fiscal year of Lessee, a copy of its consolidated statement of income and retained earnings for such year and consolidated balance sheet as at the end of such year, in each case setting forth in comparative form the corresponding figures for the preceding fiscal year, all in reasonable detail and certified by independent public accountants; (ii) as soon as available but in any event within 60 days after the end of each quarter, copies of its unaudited quarterly financial statements, (iii) on or before April 1 in each year commencing with the year 1979, an accurate statement, as of the preceding fiscal year (a) showing the amount, description and numbers of the Cars then leased hereunder, the amount, description and numbers of all Cars that may have suffered a Casualty Occurrence during the preceding fiscal year (or since the date of this Lease, in the case of the first such statement); and such other information regarding the condition and state of repair of the Cars as the Lessor may reasonably request, and (b) stating that, in the case of all Cars repainted during the period covered by such statement, the markings required by Section 7 hereof shall have been preserved or replaced; (iv) copies of any approvals by or documents filed with the Interstate Commerce Commission or any other government agency or department in connection

with the subleasing of the Cars; (v) copies of all financial reports and other reports received by the Lessee from the Sublessees under the Subleases and (vi) such other information relating to the Cars or the financial condition of the Company as the Lessor shall reasonably request.

The Lessor shall have the right (but shall not be obligated), at its sole cost and expense, by its authorized representatives, to inspect the Cars and the Lessee's records with respect thereto, at such reasonable times as it shall deem necessary, to confirm to the Lessor the existence and proper maintenance thereof during the continuance of this Lease.

12. Maintenance; Compliance with Laws and Rules; and Indemnification. THE LESSOR LEASES THE CARS TO THE LESSEE AS-IS AND WITHOUT ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY, FITNESS FOR ANY PURPOSE, DESIGN OR CONDITION (WHETHER OR NOT DISCOVERABLE) OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, OR THE LESSOR'S TITLE TO, OR LESSEE'S RIGHT TO QUIET ENJOYMENT OF, THE CARS DELIVERED TO THE LESSEE HEREUNDER, OR ANY OTHER MATTERS WHATSOEVER, but the Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the Lessee, as their interests may appear, whatever claims and rights the Lessor may have, as owner, under any express or implied warranties of any manufacturer or vendor, but in all cases at the sole cost and expense of the Lessee.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Car which is subject to this Lease in good order and repair, ordinary wear and tear excepted. The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including when applicable the rules of the Interstate Commerce Commission and the current Interchange Rules, or supplements thereto, of the Association of American Railroads) with respect to the use, maintenance and operation of each Car subject to this Lease. In case any equipment or appliance on any such Car shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Car in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such changes, additions and replacements at its own expense; and the Lessee agrees to maintain such Car in full compliance with such laws, regulations, requirements and rules so long as it is subject to this Lease.

If at any time during the lease term of any Cars under this Lease, it shall be determined by the Interstate Commerce Commission or by the Association of American Railroads that any of such Cars do not conform to the respective standards, specifications and requirements of either of the two entities named in this paragraph, Lessor may, at its option, upon 30 days' notice to Lessee, declare a Casualty Occurrence with respect to such nonconforming Cars if Lessee does not agree in writing within said 30-day period to correct such non-conformity at its sole cost and expense. If the Lessee so agrees, it shall effect such correction within 120 days from the date of such notice or such longer period as may be permitted by the Interstate Commerce Commission or the Association of American Railroads, but in any event prior to the expiration of the term of this Lease. Upon a declaration of a Casualty Occurrence under this Section, Lessee shall pay to Lessor on the next succeeding rental payment date the Casualty Value (as defined in Schedule C hereto) of such Cars as of the date of such payment, in accordance with Schedule C. Upon payment of such Casualty Value and payment of all rent accrued and unpaid on each such Car to the date of payment, (i) rent on each such Car shall cease to accrue, (ii) title to each such Car shall automatically pass to the Lessee AS-IS AND WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, ON THE PART OF LESSOR, and (iii) the term of lease of each such Car shall end.

Any readily removable parts, additions and improvements installed or made by the Lessee or any sublessee upon any Car which are not required in order to maintain the Cars in good working condition (reasonable wear and tear excepted) or in order to conform with the requirements of the Interstate Commerce Commission, the Association of American Railroads or similar governing entities shall be the property of the Lessee and title thereto shall be immediately vested in the Lessee. All other parts, additions and improvements installed or made by the Lessee or any sublessee upon any Car shall be considered accessories to such Car and title thereto shall be immediately vested in the Lessor, without cost or expense to the Lessor.

The Lessee shall defend, indemnify and save harmless the Lessor and the Beneficiaries and their respective successors and assigns from and against (i) any and all loss or damage of or to the Cars, usual wear and tear excepted, and (ii) any claim, cause of action, damages, liability, cost or expense (including counsel fees and costs in connection therewith) which may be incurred in any manner by or for the account of any of them (a) relating to the Cars or any part thereof, including without limitation, the construction, purchase, delivery, installation, ownership, leasing or return of the Cars or as a result of the use, maintenance, repair, replacement, operation or the condition thereof

(whether defects are latent or discoverable by the Lessor or by the Lessee), (b) by reason or as the result of any act or omission of the Lessee for itself or as agent or attorney-in-fact for the Lessor hereunder, (c) as a result of claims for patent infringements, or (d) as a result of negligence or strict liability in tort. The indemnities in this paragraph shall continue in full force and effect notwithstanding the termination or expiration of this Lease, provided that Lessee shall not be required to indemnify Lessor for loss or liability resulting from acts or events occurring after the termination or expiration of this Lease except such acts or events in connection with the return of the Cars as provided in Sections 13 and 15 hereof.

13. Return of Cars Upon Expiration of Term. Upon the expiration of the term of this Lease with respect to any Car (except any Car title to which has passed to the Lessee pursuant to Sections 9 or 12 hereof), the Lessee will, at its own cost and expense, at the request of the Lessor, cause possession of such Car to be delivered to the Lessor upon any storage tracks as the Lessor may designate, or, in the absence of such designation or agreement, as the Lessee may select, and permit the Lessor to store such Car on such tracks for a period not exceeding one hundred twenty (120) days. All movement and storage of such Cars is to be at the expense and risk of the Lessee and during the period of any movement or storage the Lessee shall maintain the insurance required by Section 10 hereof. During any such storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Car, to inspect, at its sole cost and expense, the same. The assembling, delivery and storage of the Cars as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver and store the Cars.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 13, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Car to the Lessor, to demand and take possession of such Car in the name and on behalf of the Lessee from whosoever shall be at the time in possession of such car.

14. Events of Default. If during the continuance of this Lease, one or more of the following events ("Events of Default") shall occur:

(a) Default shall be made in the payment of any part of the rental provided in Section 3 hereof and such default shall continue for ten days;

(b) The Lessee shall fail to carry and maintain the insurance on the Cars in accordance with the provision of Section 10 hereof;

(c) The Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or of possession of the Cars, or any portion thereof, and shall fail or refuse to cause such assignment or transfer to be cancelled by agreement of all parties having any interest therein and to recover possession of such Car within 30 days after written notice from the Lessor to the Lessee demanding such cancellation and recovery of possession;

(d) Default shall be made in the observance of performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 30 days after written notice from the Lessor to the Lessee, specifying the default and demanding the same to be remedied;

(e) The Lessee shall consent to the appointment of a receiver, trustee or liquidator of itself or of a substantial part of its property, or the Lessee shall admit in writing its inability to pay its debts generally as they come due, or shall make a general assignment for the benefit of creditors; or

(f) Any proceeding shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Lessee hereunder), and, if instituted against the Lessee, are consented to or are not dismissed within 60 days after such proceedings shall have been commenced;

then, in any such event and during the continuance thereof, the Lessor, at its option may

(i) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages, including reasonable attorneys' fees, for the breach thereof; or

(ii) by notice in writing to the Lessee terminate this Lease, whereupon all right of the Lessee to the use of the Cars shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Cars may be and take possession of all or any of such Cars and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Cars for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Car, which represents the excess, if any, of the then present value (discounted at 6% per annum) at the time of such termination, of all rentals for such Car which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Car over the then present value (discounted at 6% per annum) of the then fair rental value of such Car for such period as determined by appraisal in accordance with the procedures set forth in Section 19 hereof; (ii) any losses, damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, including, without limitation, an amount which, in the reasonable opinion of the Lessor, after

deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, would cause the Lessor's net return under this Lease to be equal to the net return that would have been available if the Lessor had been entitled to take the deduction in respect of the depreciation of the Cars in the manner described in Section 20 hereof had such deduction not been lost, not available, disallowed or recaptured as a result of default by the Lessee or the sale or other disposition of any Cars by the Lessor after repossession or return thereof to the Lessor upon the occurrence of an Event of Default.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any and all existing or future claims to any offset against the rental payment due hereunder, and agrees to make the rental payments regardless of any offset or claim which may be asserted by Lessee or on its behalf in connection with the Lease of the Cars.

The failure of Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

15. Return of Cars Upon Default. If the Lessor shall terminate this Lease pursuant to Section 14 hereof, the Lessee shall forthwith deliver possession of the cars to the Lessor in the same manner as provided in Section 13 hereof.

16. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor.

If no Event of Default (or other event which with the giving of notice or the lapse of time or both would become an Event of Default) shall have occurred and be continuing, the Lessee shall be entitled to

the possession and use of the Cars in accordance with the terms of this Lease and shall be entitled to sublease (but not assign) its leasehold interest under this Lease in the Cars or any of them; provided, however, that the Lessee shall not use or permit the Cars to be used or maintained predominately outside the continental United States so that they cease to be "Section 38 property" within the meaning of Section 48(a)(1) of the Code (as hereinafter defined), and provided that the rights of such sublessee are made expressly subordinate to the rights and remedies of the Lessor under this Lease and that such sublessee shall make no further assignment, sublease or transfer of the Cars or any of them except for the use of the Cars upon connecting and other carriers in the usual interchange of traffic. No such permitted sublease shall relieve the Lessee of any liability or obligation hereunder which shall be and remain that of a principal and not a surety. The Lessee, at its own expense, will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor not related to the ownership of the Cars) which may at any time be imposed on or with respect to any Car including any accession thereto or the interests of the Lessor or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Cars, except to the extent permitted by the provisions of this paragraph.

In the event of any such sublease of the Cars, the Lessee expressly undertakes to cause the sublessee to take such actions, secure such approvals and file such documents as shall be necessary and desirable under the Interstate Commerce Act and the Uniform Commercial Code to fully protect the interests of the Lessor and the Lessee in the Cars.

Nothing in this Section 16 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Cars or possession of the Cars to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety.

17. Further Assurances. The Lessee will, at its expense, from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will re-file, re-register, re-record or re-deposit whenever required) any and all instruments required by law or reasonably requested by the Lessor, for the purpose of proper protection, to the satisfaction of the Lessor, of its title to the Cars, or for the purpose of carrying out the intention of this Lease.

18. Lessor's Right to Perform and Payments by Lessee. If Lessee fails to make at the agreed time any payments required by this Lease or fails to discharge any of its other obligations contained herein, Lessor may, but shall not be required to, make such payments or discharge such obligations. The amount of any such payment and Lessor's expenses, including without limitation reasonable legal fees and expenses in connection therewith and with such performance, shall be payable by Lessee promptly upon notice from Lessor that such amount is due.

Any provision herein that Lessee shall take any action shall require Lessee to do so at its sole cost and expense. Lessee shall pay Lessor interest at the rate of 10% per annum (to the extent lawful) from the date it is required to make any payment of rent or other amount hereunder to Lessor to the date such payment is made.

19. Renewal, Purchase Option and Appraisal. If no Event of Default (or other event which after the lapse of time or giving of notice or both would become an Event of Default) shall have occurred and be continuing, the Lessee shall be entitled at its option, upon written notice to Lessor at least 120 days prior to the expiration of the original term of this Lease or of any subsequent renewal term of this Lease, to elect to extend the term of this Lease in respect of all but not less than all of the then existing Cars then subject to this Lease for a term of one (1) additional year at the then "fair rental value", provided that Lessee may extend this Lease for a maximum of ten (10) years in the aggregate.

If no Event of Default (or other event which after the lapse of time or giving of notice or both would become an Event of Default) shall have occurred and be continuing and this Lease shall not have been earlier terminated, Lessee shall be entitled, at its option, upon written notice to Lessor at least 120 days prior to the expiration of the original term of this Lease or any subsequent renewal term of this Lease, to purchase all but not less than all of the Cars leased hereunder at the expiration of such term at a price equal to the "fair market value" of the Cars at the end of such term. On the date of such purchase, Lessee shall pay Lessor the purchase price of all such Cars in cash and Lessor shall transfer title to all such Cars to Lessee AS-IS AND WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, ON THE PART OF LESSOR, together with such documents evidencing transfer of title as Lessee shall reasonably request.

The "fair rental value" or "fair market value" of such Cars shall be determined by an appraiser selected by mutual agreement

between the Lessor and the Lessee. If the Lessor and the Lessee are not able to agree upon an appraiser by a date within 90 days prior to the end of the term, the fair rental value or fair market value, as the case may be, shall be determined by American Appraisal Company. In the event of a purchase the fair market value as finally determined shall bear interest for the period, if any, from the date of expiration of this Lease to the date of payment at the rate of 10% per annum. Unless the Lessee has given the Lessor 120 days' notice as required in connection with exercise of the foregoing options, the Cars shall be returned to the Lessor at the end of the original term or any renewal term.

20. Federal Income Taxes. The Lessor hereby agrees that it will in accordance with Section 48(d) of the Internal Revenue Code of 1954, as amended ("the Code"), and the regulations thereunder, make a timely election to treat the Lessee as having acquired the Cars for purposes of the investment tax credit provided by Section 38 (and related sections) of the Code so that Lessee may receive the benefit of such credit to the extent it is available; provided, however, that the Lessee shall be solely responsible for the preparation and filing of all documents necessary to effect such election. The Lessor makes no representation or warranty whatsoever to the Lessee or to anyone with respect to the existence, availability to any party hereto or otherwise, of any investment tax credit arising out of, connected with, or due to, any purchase, ownership, lease or use of any of the Cars, except that the Lessor agrees that it will not claim such investment tax credit on any returns filed by it. Any non-existence, non-availability or disallowance of any such investment tax credit shall in no way affect, alter, change or excuse any obligation hereunder of Lessee. Except as provided in this section, the Lessor (or the Beneficiaries), as the owner of the Cars, shall be entitled to such deductions, credits and other benefits as are provided by the Code to an owner of property, including, without limitation, the maximum depreciation deduction with respect to the Cars authorized under Section 167 of the Code based on the aggregate Purchase Price of the Cars utilizing the Asset Depreciation Range lower limit of 12 years as provided in Asset Guideline Class No. 00.25 in accordance with Section 167(m) of the Code employing the double declining balance method of depreciation, switching (without the consent of the Commissioner of Internal Revenue) to the sum-of-the-years-digits method when most beneficial to the Lessor (or the Beneficiaries) and taking into account an estimated gross salvage value of 10% of the Purchase Price as provided in Section 167(f) of the Code (such depreciation deduction being hereinafter called the "ADR Deduction").

The Lessee represents and warrants that (i) at the time Lessor becomes the owner of any Car, such Car will constitute "new Section 38

property" as defined in Section 48(b) of the Code and no portion of such Car shall have been used by any person so as to preclude the "original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with the Lessor, and (ii) at all times during the term of this Lease, such Car will constitute "Section 38 property" within the meaning of Section 48(a)(1) of the Code, and will not be used predominately outside the United States within the meaning of said Section 48(a)(2).

If there shall be a disallowance, elimination, recomputation, reduction, recapture or disqualification (hereinafter called "Loss"), in whole or in part, of the ADR Deduction, the Lessee shall, after written request of the Lessor pay to the Lessor additional rent to compensate the Lessor (or the Beneficiaries) for the consequent lost cumulative deferral of income tax liability, which may exist thereafter from time to time, as determined in good faith by the Lessor. Such additional rent shall be an amount which, after deduction of federal and state, city and local income taxes, interest and penalties (after giving credit for any savings in respect of any such taxes, penalties and interest by reason of deductions, credits or allowances in respect of the payment of any other such taxes arising out of this transaction) required to be paid by the Lessor (or the Beneficiaries) with respect to the receipt of such additional rent, will in the reasonable opinion of the Lessor made in good faith cause the Lessor's (or the Beneficiaries') net after-tax yield in respect of such Cars to equal the net yield in respect of such Cars that the Lessor (or Beneficiaries) would have received if the Lessor (or the Beneficiaries) had not suffered a Loss with respect to the ADR Deduction. Such additional rent shall be paid commencing with the first periodic rental payment due after the Lessor notifies the Lessee of the required additional rent, if this Lease has not terminated, otherwise, within 30 days after the Lessor notifies the Lessee of the required additional rent. In the event any additional rent is required to be paid pursuant to this Section 20, the Casualty Values set forth in Schedule C shall be revised as necessary to preserve the net after-tax yield on the Lessor's (or the Beneficiaries') investment in the Cars as provided hereinabove.

Notwithstanding the provisions of the immediately preceding paragraph of this Section 20, the Lessee shall not be required to make any payment on account of any Loss with respect to any Car due solely to any of the following:

(a) A Casualty Occurrence with respect to any Car, whereby the Lessee is required by the terms hereof to pay, and shall pay in

full, the appropriate Casualty Value, provided, however, that the indemnities set forth in this Section 20 shall continue in effect, notwithstanding such payment of Casualty Value, with respect to the period prior to the date of payment of said Casualty Value;

(b) At any time while such Car is leased hereunder and no Event of Default has occurred and is continuing unremedied, the Lessor shall have (without the written consent of the Lessee) voluntarily transferred its interest in such Car to anyone or otherwise shall have disposed of any interest in the Car (not including a transfer pursuant to Section 9 or 12 hereof) or shall reduce its interest in the profits from the Car, and such transfer, disposal or reduction by the Lessor shall be the sole and direct cause of the Loss of the ADR Deduction;

(c) The failure to properly claim the ADR Deduction in the tax returns filed by Lessor (or the Beneficiaries) or any affiliated group of which they may be a member or the failure to follow the proper procedure in claiming the same, and such failure to claim or to follow such procedure, as the case may be, shall preclude the Lessor from claiming the ADR Deduction;

(d) The failure of the Lessor (or the Beneficiaries) to have any federal income tax liability from which to deduct the ADR Deduction.

(e) Any change or amendment of the Code or the regulations thereunder subsequent to the delivery and acceptance of the ^{First} Cars hereunder. MTE
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In the event a claim shall be made by the Internal Revenue Service or by a state or local taxing authority with respect to the disallowance of the ADR Deduction and Lessee shall be required to indemnify Lessor for the Loss caused by such disallowance, Lessor agrees to notify the Lessee and take such action in connection with contesting such claim as Lessee shall reasonably request from time to time (including to the extent allowable under applicable state and federal statutes appeal of any adverse determination or decision) provided, that: (i) within thirty (30) days after notice by Lessor to Lessee of such claim, Lessee shall request that such claim be contested; and (ii) Lessor at its sole option, may forego any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service or with the state or local taxing authority in respect of such claim and may, at its sole option, either pay the tax claimed and sue for a refund in the appropriate United States District Court and/or the United States Court

of Claims, as Lessor shall elect, or contest such claim in the Tax Court of the United States, or in the appropriate state or local court of competent jurisdiction, considering, however, in good faith such request as Lessee shall make concerning the most appropriate forum in which to proceed.

The Lessor's obligations (other than Lessor's obligation to notify the Lessee of the proposed adjustment) under the preceding paragraph are conditioned upon the Lessee having first (a) furnished the Lessor an opinion of independent tax counsel that a reasonable and bona fide defense to such claim exists, (b) agreed to indemnify the Lessor in a manner satisfactory to the Lessor for any liability or loss which the Lessor may incur as a result of contesting such adjustment and (c) agreed to pay the Lessor on demand all costs and expenses which the Lessor may incur as a result of contesting such adjustment including without limitation (i) reasonable attorneys', accountants', engineers' and like professional fees and disbursements, and (ii) in the event that the Lessor shall elect to contest the adjustment by paying the tax claimed and then seeking a refund thereof, an amount equal to 10% per annum interest on the amount of such tax computed from the date of payment of such tax to the date of final determination of such adjustment, such amount to be payable in equal installments within each calendar year on the dates on which rent for such period is payable. Upon receipt by the Lessor of a refund of any tax paid by it in respect of which Lessee has paid an amount equal to interest at the rate of 10% while such tax payment was contested by the Lessor, any interest on such refund paid to the Lessor by the United States Government shall be paid to Lessee forthwith upon receipt by the Lessor.

The Lessee's agreement to pay any sums which may become payable pursuant to this Section 20 shall survive the expiration or other termination of this Lease.

21. Termination by Lessee. At any time after the seventh anniversary of the Basic Term Commencement Date, if no Event of Default (or other event which after the lapse of time or the giving of notice or both would constitute an Event of Default) shall have occurred and be continuing, the Lessee shall have the right at its option, on at least six months prior written notice to the Lessor, to terminate this Lease with respect to all but not less than all of the Cars then subject hereto on the date specified in such notice ("the Termination Date") which shall be a rental payment date. During the period from the giving of such notice until the Termination Date, the "fair market

value" of such Cars shall be determined in the manner provided in Section 19 hereof. The Lessee shall at the option of the Lessor either (i) return the Cars to Lessor as provided in Section 13 hereof and pay to Lessor the amount, if any, by which the Termination Value (as defined and determined in accordance with Schedule E hereof) exceeds the fair market value as so determined, or (ii) pay to Lessor the Termination Value or the fair market value as so determined, whichever is greater. In the event Lessor elects the options provided in (i), Lessee agrees that the cars shall be placed in as good a condition as when first placed in service under this Lease, normal wear and tear excepted. In the event Lessor exercises the option provided in (ii), upon payment of the amount therein specified, together with all rent accrued to the Termination Date, title to such Cars shall automatically pass to Lessee AS IS AND WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, ON THE PART OF LESSOR, and this Lease shall thereupon end. Lessee shall pay all costs, expenses and taxes (excluding only federal and state income taxes based on net income) incurred by Lessor or Lessee in connection with the termination of the Lease pursuant to this Section, including but not limited to appraisal costs, legal fees, transportation and insurance costs.

22. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States mail, first-class certified mail, postage prepaid or, in the event of telex notice, when delivered to the telex office, charges prepaid, addressed as follows:

If to the Lessor:

Birmingham Trust National Bank
P.O. Box 2554
Birmingham, Alabama 35290

If to the Lessee:

BRALEASE Corporation
c/o Brae Corporation
Three Embarcadero Center
San Francisco, California 94111

Attn: Vice President - Finance

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

23. Retention of Title. The Lessor shall and hereby does retain full legal title to the Cars notwithstanding the delivery thereof to and the possession and use thereof by the Lessee.

24. Law Governing. This Lease shall be deemed to be a contract under the laws of the State of Alabama and shall be governed by and construed in accordance with the laws of such State.

25. Capacity of the Lessor. The Lessor has executed this Lease solely in its capacity as owner trustee under the trust agreement referred to above and not in its individual or corporate capacity, and its liability hereunder shall be limited to assets held by it as such trustee.

26. Miscellaneous. If this Lease or any provision hereof shall be deemed invalid, illegal, or unenforceable in any respect or in any jurisdiction, the validity, legality, and enforceability of this Lease in other respects and other jurisdictions shall not in any way be impaired or affected thereby. The section headings in this Lease are for convenience of reference only and shall not be considered to be a part of this Lease. This Lease may be executed in as many counterparts as may be deemed necessary and convenient, by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original, and all such counterparts shall constitute but one and the same instrument. This Lease (including Schedules A, B, C, D and E) and the purchase order assignments contain the entire understanding of Lessor and Lessee with regard to the Lease of the Cars hereunder.

IN WITNESS WHEREOF, the Lessor and the Lessee have each caused this Lease to be duly executed as of the date first above written.

BIRMINGHAM TRUST NATIONAL BANK, as Owner
Trustee under that certain Trust Agreement
with Birmingham Trust National Bank and
Schuler Industries, Inc., dated as of
May 31, 1978

By Carl B. Smith
Title Vice President - Corp Trust

BRAELEASE CORPORATION

By Lawrence W. Busico
Title Vice President

(Corporate Seal)

ATTEST: Michael T. Evans
Assistant Secretary

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County,
in said State, hereby certify that Carl P. Smith,
whose name as Vice President - Corporate Trust of Birmingham Trust National Bank,
a national banking association, as Owner Trustee under that certain
Trust Agreement with Birmingham Trust National Bank and Schuler Industries,
Inc. dated as of May 31, 1978, is signed to the foregoing instrument,
and who is known to me, acknowledged before me on this day, that being
informed of the contents of said instrument, he, as such officer, and
with full authority, executed the same voluntarily for and as the act
of said national banking association, acting in its capacity as Owner
Trustee as aforesaid.

Given under my hand this the 12th day of October, 1978.

Helen W. Halcomb
Notary Public

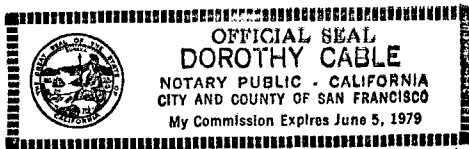
[NOTARIAL SEAL]

My Commission Expires: _____

My Commission Expires Sept. 20, 1980

STATE OF CALIFORNIA)
CITY AND COUNTY OF SAN FRANCISCO)

On this 11th day of OCTOBER, 1978, before me personally
appeared LAWRENCE W. BRISCOE, to me personally
known, who being by me duly sworn, says that he is VICE PRESIDENT
 of BRAELEASE Corporation, that one of the seals affixed
to the foregoing instrument is the corporate seal of the said corporation,
that the said instrument was signed and sealed on behalf of said cor-
poration by authority of its Board of Directors and he acknowledged that
the execution of the foregoing instrument was the free act and deed of
said corporation.



[NOTARIAL SEAL]

Dorothy Cable
Notary Public

My Commission Expires: 6-5-79

SCHEDULE A

To Equipment Lease Agreement between
Birmingham Trust National Bank, as owner trustee
and BraeLease Corporation

1. DESCRIPTION OF CARS AND MARKS AND NUMBERS: 100 70-ton, 50'6" Single Sheath Box-cars with 10" End-of-Car Cushioning, Double 8' Sliding Doors Offset on Car, AAR Plane "C", Nailable Steel Flooring, Lading Anchors, bearing identifying numbers YW25101 through YW25200, inclusive.
2. PURCHASE PRICE: \$36,550 per Car, plus such escalation as Lessor and Lessee may agree upon.
3. PLACE OF DELIVERY:
4. TERM: Commencing on delivery of the Cars and continuing for 15 years from ~~January 1~~, 1979.
Nov 1
5. BASIC RENT: Payable in 60 quarterly installments in arrears commencing ~~March 31~~, 1979, each equal to 3.189424% of the aggregate Purchase Price of the Cars.
Nov 31
6. DAILY INTERIM RENT: An amount equal to .035438% of the Purchase Price for each Car.

Schedule B

To Equipment Lease Agreement between
Birmingham Trust National Bank, as owner trustee,
and BraeLease Corporation

Certificate of Acceptance No. _____
Dated this _____ day of _____, 1978

The Certificate of Acceptance is executed pursuant to an
Equipment Lease Agreement dated as October ~~September~~ 1, 1978, between
Birmingham Trust National Bank, as owner trustee, and BraeLease Cor-
poration (the "Lease").

MTZ
CSL

The terms used herein which are defined in the Lease shall
have the meaning given to such terms in the Lease.

The Lessee does hereby confirm that the Cars set forth below
have been delivered as of the above date, that such Cars have been
accepted on behalf of Lessor by its duly appointed and authorized re-
presentatives, and that the Lease with respect to such Cars shall com-
mence as of such date.

Lessee confirms that the Purchase Price per Car is \$ _____.

Lessee confirms that such Cars have been examined by duly
appointed and authorized representatives of Lessee and such examination
shows that the following legend and mark and number have been affixed to
each Car:

Property of and leased from Birmingham
Trust National Bank, as owner trustee,
subject to an ~~equipment lease~~ agreement
filed under the Interstate Commerce Act,
Section 20c.

MTZ
CSL

Marks and numbers:

Lessee confirms that on the aforesaid date of delivery (i) such Cars were duly accepted by Lessee as Cars for leasing under the Lease, (ii) such Cars became subject to and governed by the terms of the Lease and (iii) Lessee became obligated to pay to Lessor the rentals provided for in the Lease with respect to such Cars.

Executed the day and year first above written as a schedule to and a part of the Lease.

BRALEASE CORPORATION
Lessee and Agent for Lessor

By _____
Title _____

SCHEDULE C

To Equipment Lease Agreement between Birmingham Trust National Bank, as owner trustee, and BraeLease Corporation

In a proceeding designated Ex Parte No. 252 (Sub-No. 1), Incentive Per Diem Charges - 1968, the Commission promulgated regulations which are published at 49 Code of Federal Regulations Part 1036. Those regulations require common carriers by railroad to pay prescribed per diem charges on "XM" and "XF" boxcars, owned or leased by other common carriers by railroad, during the period September through February. Effective July 1, 1978, the per diem car hire fare and the incentive rate were modified to hourly charges. They are designed to encourage the acquisition and improved utilization of types of cars for which the Commission has found the supply to be inadequate. The regulations also define the uses which collecting carriers may make of the funds resulting from such charges.

In a proceeding designated Ex Parte No. 252 (Sub-No. 2), Incentive Per Diem Charges - Gondolas, the Commission is considering extending the present regulations to include gondolas. The Commission has prescribed regulations requiring incentive per diem to be paid on gondolas but it has stayed indefinitely the effective date of the regulations. The proceeding has been reopened and interested parties have been allowed to comment on an economic analysis upon which the Commission concluded the supply of plain gondola cars is adequate for the purposes of section 1 (14)(a) of the Interstate Commerce Act. This conclusion, if not changed on the basis of comments of interested parties, bars the extension of incentive per diem to gondolas.

In a proceeding designated Ex Parte No. 252 (Sub-No. 3), Use of Incentive Per Diem Funds, the Commission is considering possible revisions of the regulations to permit use of incentive per diem funds for (1) projects designed to improve freight car utilization by means other than construction, purchasing, leasing or rebuilding of freight cars; (2) repair and maintenance of freight cars under certain circumstances; and (3) a second non-equity lease where the initial lessee defaults and the term of the second lease equals the remainder of the initial lease. Interested parties filed initial statements by July 13, 1978, and reply statements by August 2, 1978. Based upon these statements the Commission will determine whether a rulemaking proceeding to amend the existing regulations should be instituted.

In a proceeding designated Ex Parte No. 334, Car Service Compensation - Basic Per Diem Charges - Formula Revision in Accordance With The Railroad Revitalization and Regulatory Reform Act of 1976, the

Commission considered proposals for revision of the basic per diem charges which one railroad pays for the use of a freight car of another railroad. These charges apply to all freight cars and are separate from incentive per diem charges. It is anticipated that the effect of the Commission's decision, served August 10, 1977, and modified by report and order served April 3, 1978, and orders served May 24, 1978, and July 11, 1978, will be to increase basic per diem charges. The amount, if any, of such increase will not be determined until pending Court proceedings separately initiated by Consolidated Rail Corporation and Atchison, Topeka & Santa Fe Railway Company are resolved and until financial reports are filed with the Commission by rail carriers for calendar year 1978.

SCHEDULE D

To Equipment Lease Agreement between
Birmingham Trust National Bank, as owner trustee,
and BraeLease Corporation

The Casualty Value for a Car on any rental payment date shall be the amount determined by multiplying the Purchase Price for such Car by the percentage set forth opposite the number of such rental payment date as follows:

<u>Casualty Value Due on Date of Rental Payment Number</u>	<u>Casualty Value As of % of Purchase Price</u>
Interim	106.889%
No. 1	106.677%
2	106.772%
3	106.819%
4	106.820%
5	106.776%
6	106.687%
7	106.556%
8	106.344%
9	106.025%
10	105.662%
11	105.241%
12	104.761%
13	104.210%
14	103.612%
15	102.959%
16	102.248%
17	101.460%
18	100.632%
19	99.752%
20	98.816%
21	97.797%
22	96.745%
23	95.644%
24	94.488%
25	93.244%
26	91.974%
27	90.659%
28	89.290%
29	87.828%
30	86.347%
31	84.824%
32	83.249%
33	81.575%
34	79.890%
35	78.166%
36	76.393%
37	74.515%

SCHEDULE D

Casualty Value Due
on Date of Rental
Payment Number

Casualty Value
As of % of Purchase Price

38	72.634%
39	70.718%
40	68.754%
41	66.680%
42	64.611%
43	62.510%
44	60.364%
45	58.102%
46	55.854%
47	53.577%
48	51.258%
49	48.822%
50	46.402%
51	43.954%
52	41.464%
53	38.856%
54	36.261%
55	33.635%
56	30.963%
57	28.174%
58	25.484%
59	22.777%
60 and thereafter	20.000%

SCHEDULE E

To Equipment Lease Agreement between
Birmingham Trust National Bank, as owner trustee,
and BraeLease Corporation

<u>Termination Value Due on Date of Rental Payment Number</u>	<u>Termination Value As of % Purchase Price</u>
29	85.085%
30	83.684%
31	82.240%
32	80.746%
33	79.151%
34	77.546%
35	75.903%
36	74.211%
37	72.414%
38	70.614%
39	68.780%
40	66.899%
41	64.906%
42	62.920%
43	60.903%
44	58.841%
45	56.663%
46	54.500%
47	52.309%
48	50.076%
49	47.726%
50	45.392%
51	43.033%
52	40.630%
53	38.110%
54	35.604%
55	33.068%
56	30.487%
57	27.788%
58	25.225%
59	22.651%
60 and thereafter	20.000%

The Termination Value for a Car on any rental payment due shall be the amount determined by multiplying the Purchase Price for such Car by the percentage set forth above opposite the number of such rental payment date.